

May 17, 2017

Donald F. McGahn II  
White House Counsel  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. McGahn:

Democracy 21 is writing to remind you that you are obligated under the law to ensure that any White House tape recordings of President Trump's conversations are preserved as evidence for potential criminal or congressional investigations.

Such investigations, including an investigation of whether President Trump has committed obstruction of justice, may be undertaken in light of the FBI investigation into Russia's interference in the 2016 presidential election and the events over the last three months that ended with President Trump's recent firing of FBI Director James Comey.

After his firing of Director Comey on May 9, the President in a tweet said, "James Comey better hope that there are no 'tapes' of our conversations before he starts leaking to the press!"<sup>1</sup>

This statement by the President strongly implies that the White House has taped some or all of the President's conversations, a fact that the White House has subsequently not denied.

History shows that President Richard Nixon faced a temptation to destroy the tape recordings that ended up being used against him in the Watergate investigations.

In April 1973, as the Watergate crisis mounted and before the existence of his White House tapes was publicly revealed, President Nixon agreed to have the tape recordings destroyed. In a conversation with aide H.R. Haldeman on April 9, 1973, Nixon "agreed with Haldeman that they ought to 'get rid' of the recordings."<sup>2</sup>

However, he and Haldeman did not then act on the agreement.

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<sup>1</sup> @realDonaldTrump, May 12, 2017.

<sup>2</sup> G. Lardner and W. Pincus, "Nixon Ordered Tapes Destroyed," *The Washington Post* (October 30, 1997).

Nixon later regretted that he had not destroyed the White House tapes. According to a biography of Nixon:

He would come to rue his decision not to destroy the tapes. Indeed, he had second thoughts almost right away. In the early hours of Thursday, July 19, he made a note on his bedside pad: "Should have destroyed the tapes after April 30, 1973." In early April, Nixon and Haldeman had discussed getting rid of all the tapes save the ones recording his major foreign policy decisions. Distracted and caught up in Watergate, Nixon and Haldeman had not acted on this instinct. By July 19, it was too late: The subpoenas from investigators had begun to arrive.<sup>3</sup>

If, as President Trump implied, White House tapes of his conversations exist, it is your legal obligation to take all necessary steps to preserve those recordings as possible evidence in pending or future investigations.

The nation was fortunate that President Nixon and his aides did not act on Nixon's impulse to destroy the tape recordings. Those recordings became crucial evidence in the Watergate investigations that led to the ultimate resignation of President Nixon.

One of the lessons of Watergate is that any similar desire that President Trump might have to destroy White House tape recordings must be thwarted.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President

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<sup>3</sup>

E. Thomas, *Being Nixon: A Man Divided*, Random House (2015).